EXHIBIT 1

Exhibit 1

Civil Case and Transaction Information

04/26/2022 10:44 AM

Assessed Fee Credit/Paid Fee

Court :	096	✓ Case:	332763	Search	New Search	Show Service Documents ONLY
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TRACY JOHNSON | VS | KROGER TEXAS, L.P.

Cause of Action: INJURY OR DAMAGE, PREMISES

Case Status : PENDING
File Mark Description

03-29-2022	PLTF'S ORIG PET	N N	\$350.00	
03-29-2022	PAYMENT RECEIVED trans #1	Y		\$213.00
03-29-2022	PAYMENT PAID TO STATE trans #1	Y		\$137.00
03-29-2022	CIT-ISSUED ON KROGER TEXAS LP-On 04/04/2022	N Svc	\$8.00	
03-29-2022	PAYMENT RECEIVED trans #4	Y		\$8.00
03-29-2022	JURY REQUESTED			\$0.00
04-01-2022	LTR REQ CIT BE EMAILED (DP 4/1/22 ER)	703		\$0.00
04-06-2022	AFFDT OF SERVICE/KROGER TX LP	702		\$0.00
04-06-2022	CIT Tr# 4 RET EXEC(KROGER TEXAS LP) On 04/04/2022	203		<u>\$0.00</u>

Case 4:22-cv-00355-P Document 1-2 Filed 04/26/22 Page 3 of 21 PageID 9 04-19-2022 DEFN'S ORIG ANS



\$0.00

EXHIBIT 2

Exhibit 2



Notice of Service of Process

null / ALL Transmittal Number: 24729570 Date Processed: 04/06/2022

Primary Contact: Venessa C. Wickline Gribble

The Kroger Co. 1014 Vine Street

Cincinnati, OH 45202-1100

Entity: Kroger Texas L.P.

Entity ID Number 2172000

Entity Served: Kroger Texas LP d/b/a Kroger Store #435

Title of Action: Tracy Johnson vs. Kroger Texas, L.P., D/B/A Kroger Store #435

Matter Name/ID: Tracy Johnson vs. Kroger Texas, L.P., D/B/A Kroger Store #435 (12167521)

Document(s) Type: Citation/Petition

Nature of Action: Personal Injury

Court/Agency: Tarrant County District Court, TX

Case/Reference No: 096-332763-22

Jurisdiction Served: Texas

Date Served on CSC: 04/04/2022

Answer or Appearance Due: 10:00 am Monday next following the expiration of 20 days after service

Originally Served On: CSC

How Served:Personal ServiceSender Information:Johnson Reist PLLC
469-501-2559

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

Case 4:22-cv-00355-P Document 1-2 Filed 04/26/22 Page 6 of 21 PageID 12

THE STATE OF TEXAS DISTRICT COURT, TARRANT COUNTY

CITATION

Cause No. 096-332763-22

TRACY JOHNSON

VS.

KROGER TEXAS, L.P.

DELIVERED

4 | 04 | 202 ≥

BY: → ≥ C PSC: >114

ATX Process, LLC

TO: KROGER TEXAS LP

D/B/A KROGER STORE #435

B/S REG AGT/CSC-LAWYERS INCORPORATING SERVICE CO 211 E 7TH ST STE 620 AUSTIN TX 78701-3218

You said DEFENDANT are hereby commanded to appear by filing a written answer to the PLAINTIFFS' ORIGINAL PETITION at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 96th District Court ,100 N CALHOUN, in and for Tarrant County, Texas, at the Courthouse in the City of Fort Worth, Tarrant County, Texas said PLAINTIFF being

TRACY JOHNSON

Filed in said Court on March 29th, 2022 Against KROGER TEXAS LP, D/B/A KROGER STORE #435

For suit, said suit being numbered 096-332763-22 the nature of which demand is as shown on said PLAINTIFFS' ORIGINAL PETITION a copy of which accompanies this citation.

WESLEY G JOHNSON TO A CV JOHNSON Phone N

Attorney for TRACY JOHNSON Phone No. (469)501-2559
Address 1312 14TH ST STE 202 PLANO, TX 75074

Address	1312 14TH ST STE 202 PLA	INO, 1X 75074			× .
Thomas A. Wi	der , Clerk of the Dis	trict Court of Tarra	nt County, Texas.	Given under my ha	nd and the sea
of said Court, at of	fice in the City of Fort Worth	A RESIDENCE MARKET ARREST ARCHITECTURE	li Mygian	(X)	A CERTIFIED COPY ATTEST: 04/04/2022 THOMAS A. WILDER DISTRICT CLERK TARRES COUNTY, TEXAS
			NATALIE CHIGPE	N N	BY: /s/ Natalie Thigpen

NOTICE: You have been sued. You may employ an attorney, If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM, on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

Thomas A. Wilder, Tarrant County District Clerk, 100 N CALHOUN, FORT WORTH TX 76196-0402

Received this Citation on the	day of	at	o'clockM; and executed at
on the day of	by delivering t	o the within named (Def.)	:
lefendant(s), a true copy of this	Citation together with the acc	ompanying copy of PLAINTI	FFS' ORIGINAL PETITION
having first endorsed on same t	he date of delivery.		
Maring Lilbe chaolbed on bame t	in date of desirery.		
Authorized Person/Con	nstable/Sheriff:		
	nstable/Sheriff:State of		
County of		Ву	
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County of	State of	By (Must be verified if	Deputy

Cause No. 096-332763-22

TRACY JOHNSON

VS.

KROGER TEXAS, L.P.

ISSUED

This 4th day of April, 2022

Thomas A. Wilder
Tarrant County District Clerk
100 N CALHOUN
FORT WORTH TX 76196-0402

By NATALIE THIGPEN Deputy

WESLEY G JOHNSON

Attorney for: TRACY JOHNSON

Phone No. (469)501-2559

ADDRESS: 1312 14TH ST STE 202

PLANO, TX 75074

CIVIL LAW



09633276322000004
SERVICE FEES NOT COLLECTED
BY TARRANT COUNTY DISTRICT CLERK
ORIGINAL



CAUSE NO. O96-332763-22

CAUSE NO. SIN THE DISTRICT COURT

S

V. SUDJUCIAL DISTRICT

KROGER TEXAS, L.P. D/B/A KROGER
STORE #435

TARRANT COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

COMES NOW, Plaintiff Tracy Johnson ("Johnson" and/or "Plaintiff") and files this Original Petition against Kroger Texas, L.P., d/b/a Kroger Store #435 ("Defendant") and would respectfully show the Court the following:

I. DISCOVERY CONTROL PLAN

1.01 Plaintiff intends for discovery to be conducted under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. Plaintiff will ask the court to order that discovery be conducted in accordance with a discovery control plan tailored to the circumstances of this suit.

II. PARTIES

- 2.01 Tracy Johnson is an individual and resident of Tarrant County, Texas.
- 2.02 Defendant Kroger is a domestic for-profit limited partnership doing business in the State of Texas and may be served with process by serving its registered agent for service: Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company located at 211 E. 7th Street, Suite 620, Austin, TX 78701-3218. Plaintiff asks that citation be issued at this location or wherever it may be found and that process to be served by a private process server.

 Issuance of citation is requested at this time.

III. VENUE & JURISDICTION

- 3.01 Venue is properly in Tarrant County, Texas under the general venue statute, as it is a county in which all or a substantial part of the events or omissions giving rise to the claim occurred. Tex. Civ. Prac. & Rem. Code §15.002(a)(1).
- 3.02 The Court has jurisdiction over this cause of action because there is not complete diversity between the parties and because the amount of controversy is within the jurisdictional limits of the Court. Plaintiff is seeking damages over \$250,000 but not more than \$1,000.000.
- 3.03 Further, this Court has jurisdiction over Kroger because the Defendant transacts business in the State of Texas and purposefully availed themselves of the privileges and benefits of conducting business in Texas, including the ownership and operation of a physical retail grocery store located at 2475 Ascension Blvd., Arlington, TX 76006, and Plaintiff's causes of action arise out of these Defendants' business activities in the State of Texas. Therefore, the Court possesses subject matter jurisdiction for the causes of action and claims for relief stated herein.

IV. BACKGROUND FACTS

4.01 On or about April 19, 2020, Ms. Johnson was an invitee of Defendant at the Kroger retail store located at 2475 Ascension Blvd., Arlington, TX and was shopping with her boyfriend. There was a leaking beverage cooler and employees had just been cleaning it. The employees did not do a thorough job, nor did they put any signs up of the slippery floor. Ms. Johnson slipped and violently fell. After Ms. Johnson fall, employees acknowledged they had been cleaning up and should have put signs up. Kroger's employees admitted that they had actual knowledge that the floors in the area were wet and did not take any reasonable or prudent measures to prevent their customers from harm. There were no signs, cones or other warnings regarding the dangerous

condition that existed on the floor. Ms. Johnson was transported by ambulance to JPS Hospital ER.

4.02 As a result of the fall, Ms. Johnson has sustained severe injuries to her lower back and lumbar spine, thoracic spine, neck, S.I. joint, left hip, left shoulder, left ankle, left wrist and left knee. She has incurred significant damages directly as a result of the Defendants' negligent acts or omissions, and her quality of life has been severely impacted.

V.

CAUSES OF ACTION - NEGLIGENCE AND NEGLIGENT HIRING, TRAINING AND/OR SUPERVISION

- 5.01 Defendant had a duty to exercise ordinary care and to act as a reasonable and prudent property owner, operator and/or management company.
 - 5.02 Defendant is negligent and breached their duty of care in the following ways:
 - a. Creating a dangerous condition;
 - b. Failing to maintain the premises in a reasonably safe condition;
 - c. Failing to remedy the unsafe and dangerous condition, which Defendant knew, or in the exercise of ordinary care should have known about, to exist on premises in areas which Defendant knew that persons such as Plaintiff are likely to encounter without warning and that constitute a hazard and risk of personal injury;
 - d. Failing to warn Plaintiff of the condition on the premises which pose an unreasonable risk of harm to individuals such as Plaintiff;
 - e. Creating a dangerous condition;
 - f. In choosing not to make safe a condition on the premises which Defendant knew, or in the exercise of ordinary care should have known, poses an unreasonable risk of harm to individuals such as Plaintiff; and
 - g. In choosing not to timely and properly remedy the condition so as to prevent harm or injury to others such as Plaintiff.

- 5.03 Defendant is also negligent in hiring, supervising, training and retaining its employees who failed to clean the dangerous condition or fail to warn Plaintiff of the dangerous condition.
- 5.04 As a proximate result of all of the above, Plaintiff suffered injuries for which he now brings suit.

VI. <u>Causes of Action – Premise Liability</u>

- 6.01 At all times material hereto, Plaintiff was an invitee on the premises of 2475 Ascension Boulevard, Arlington, Texas 76006.
- 6.02 Defendant owned, operated, maintained, possessed and/or controlled the premises in question.
 - 6.03 A condition on the premises constituted an unreasonably dangerous condition.
- 6.04 Defendant, in the exercise of reasonable care, knew or should have known of the unreasonably dangerous condition.
- 6.05 Defendant had a duty to use ordinary care to ensure that the premises did not present a danger to Plaintiff. This duty includes the duty to inspect and the duty to warn or to cure. Defendant breached this duty by failing to timely clean the floor and remedy the unsafe condition on the premises or to warn Plaintiff of the hazard that existed on the premises.
- 6.06 As a proximate result of all of the above, Plaintiff suffered injuries for which he now brings suit.

VII. JURY DEMAND

7.01 Plaintiff demands a jury trial and has tendered the appropriate fee with the Original Petition.

VIII. INTENT TO USE DOCUMENTS

8.01 In accordance with Texas Rule of Civil Procedure 193.7, any documents produced by Defendant in response to written discovery may be used by Plaintiff at any pre-trial proceeding or trial.

IX. DAMAGES

- 9.01 Plaintiff respectfully requests that the trier of fact determine the amount of his damages and losses that he has incurred in the past and will reasonably incur in the future, as well as the monetary value of these damages, which include, but are not limited to:
 - a. Physical pain and suffering in the past and future;
 - b. Disfigurement in the past and future;
 - Physical impairment in the past and future;
 - Medical care expenses in the past and future;
 - Out-of-pocket economic losses;
 - f. Loss of enjoyment of life; and
 - Mental anguish in the past and future.

X. Prayer

WHEREFORE, Plaintiff Tracy Johnson respectfully prays that Defendant Kroger be cited to appear and answer herein, and that upon final hearing of the cause, judgment be entered for the Plaintiff and against Defendant for damages over \$1 million; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which Plaintiff may be entitled at law or in equity.

Respectfully submitted,

JOHNSON REIST PLLC

By:

/s/ Wesley Johnson

WESLEY JOHNSON

State Bar No. 24041204 wjohnson@johnsonreist.com

JANA S. REIST

State Bar No. 24056890 jreist@johnsonreist.com

1312 14th Street, Suite 202

Plano, Texas 75074

Telephone: 469.501.2559 Facsimile: 469.501.7471

THE LAW OFFICE OF MULLEN & MULLEN

By:

/s/ Shane Mullen

SHANE MULLEN

State Bar No. 24037152

shane@mullenandmullen.com

1825 Market Center Blvd. #200

Dallas, TX 75207

(214) 747-5240 - Telephone

(214) 761-9146 - Facsimile

ATTORNEYS FOR PLAINTIFFS

EXHIBIT 3

Exhibit 3

Case 4:22-cv-00355-P Document 1-2 Filed 04/26/22 Page 15 of 21 PageID 21

096-332763-22

FILED TARRANT COUNTY 4/19/2022 4:15 PM THOMAS A. WILDER DISTRICT CLERK

CAUSE NO. 096-332763-22

TRACY JOHNSON	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
VS.	§	96 th JUDICIAL DISTRICT
	§	
KROGER TEXAS, L.P. d/b/a Kroger Store	§	
#435	§	
Defendant.	§	TARRANT COUNTY, TEXAS

DEFENDANT'S ORIGINAL ANSWER

Defendant, Kroger Texas, L.P. (incorrectly identified as "Kroger Texas L.P. d/b/a Kroger Store #435") (the "Defendant") hereby files its Original Answer to Plaintiff's Original Petition, and, in support thereof, would respectfully show the Court as follows:

I. VERIFIED DENIAL

By way of verified denial pursuant to Texas Rule of Civil Procedure 93, Defendant denies that Plaintiff is entitled to recover from "Kroger Texas L.P. d/b/a Kroger Store #435" in the capacity in which they have been sued. Defendant denies that Kroger Texas, L.P. does business as "Kroger Store #435," and therefore denies that "Kroger Texas, L.P. d/b/a Kroger Store #435" owned or operated the store at issue on the date of this incident. Consequently, Plaintiff has no right or potential right of recovery against "Kroger Texas L.P. d/b/a Kroger Store #435" as it is not a proper party to this suit. See, e.g., *Bailey v. Vanscot Concrete Co.*, 894 S.W.2d 757, 759 (Tex. 1995). Further by way of verified denial, Defendant Kroger Texas, L.P. denies that it is a "domestic for-profit limited partnership doing business in the State of Texas," as alleged in paragraph 2.02 of Plaintiff's Original Petition. Kroger Texas, L.P., at the time of the initial filing of this action was and is a limited partnership formed under the laws of Ohio with its principal place of business in

Ohio. Kroger Texas, L.P. has never been a resident of, incorporated in, or had its principal place of business in the State of Texas.

II. GENERAL DENIAL

Defendant denies each and every, all and singular, the material allegations contained in Plaintiff's Original Petition, demands strict proof thereof, and to the extent that such matters are questions of fact, say Plaintiff should prove such facts by a preponderance of the evidence to a jury if she can so do.

III. DEFENSES AND LIMITATIONS OF LIABILITY

- Defendant had neither actual nor constructive knowledge of the condition about which Plaintiff complains, and further asserts that, in any event, the alleged hazard was not "unreasonably dangerous."
- 2. In the alternative, the accident complained of was an unavoidable accident, as that term is defined under Texas law.
- 3. Plaintiff failed to use that degree of care and caution that would have been used by a reasonable person under the same or similar circumstances, thereby producing or proximately causing or contributing to cause Plaintiff's injuries and damages, if any. Such acts or omissions of Plaintiff were the sole and/or a producing and/or a proximate and/or a supervening and/or an intervening cause of Plaintiff's damages or injuries, if any.
- 4. Plaintiff's damages or injuries, if any, were caused by the acts of third persons not under the control of Defendant. Such acts or omissions of said third persons were the sole and/or a producing and/or a proximate and/or an intervening and/or supervening cause of Plaintiff's

damages or injuries, if any.

- 5. To the extent the alleged premises condition of which Plaintiff complains was already appreciated by Plaintiff, was open and obvious, was not concealed, and/or was a known risk, Defendant denies that it owed any duty to warn Plaintiff of the alleged premises condition or protect Plaintiff from same.
- 6. Defendant respectfully requests that the factfinder allocate responsibility, if any, among all parties, settling parties, and responsible third parties, in accordance with Chapters 32 and 33 of the Texas Civil Practice and Remedies Code.
- 7. In the unlikely event an adverse judgment is rendered against Defendant in this matter, Defendant respectfully prays for contribution, indemnity and/or all available credits as provided for in the Texas Civil Practice and Remedies Code and under Texas law.
- 8. The damages about which Plaintiff complains, if any, were the result of prior or pre-existing or subsequent injuries, accidents, or conditions, and said prior or pre-existing or subsequent injuries, accidents or conditions were the sole and/or a contributing cause of Plaintiff's damages alleged against Defendant.
- 9. To the extent applicable, Plaintiff breached her duty to mitigate damages by failing to exercise reasonable care and diligence to avoid loss and minimize the consequences of damages.
- 10. To the extent applicable, Plaintiff is malingering and/or exaggerating the nature and severity of her injuries in order to continue treatment, and accordingly, Defendant contends said treatment is not medically necessary or reasonable.

11. Any claims for medical or health care expenses incurred are limited to the amount actually paid or incurred by or on behalf of Plaintiff, pursuant to Texas Civil Practice and Remedies Code § 41.0105.

IV. SPECIAL EXCEPTIONS

Further answering herein, Defendant objects and specially excepts to section VIII of Plaintiff's Original Petition, titled "Notice of Intent," which improperly attempts to invoke Rule 193.7 of the Texas Rules of Civil Procedure. Specifically, section VIII of Plaintiff's Original Petition states that "Plaintiff hereby gives notice of intent to utilize any and all items produced in discovery in the trial of this matter and the authenticity of such items is self-proven under the Texas Rules of Civil Procedure 193.7." However, Rule 193.7 requires that the party invoking Rule 193.7 provide "actual notice that the document will be used" to the producing party. Furthermore, "the ten-day period allowed for objection to authenticity . . . does not run from the production of the material or information but from the party's actual awareness that the document will be used." Accordingly, it is clear that Rule 193.7 requires more than a mere blanket statement that all documents produced in discovery will be authenticated against the producing party. Such a blanket statement not only fails to satisfy the requirements of Rule 193.7, but it also places an unreasonable burden upon Defendants to review all documents they produce and prophylactically render objections regarding the authenticity of said documents. Therefore, Defendants request that the Court strike section XII of Plaintiff's Original Petition, titled "Notice of Intent" in its entirety. Therefore, Defendant requests that the Court strike section VIII in its entirety.

V. COURT REPORTER REQUESTED

Defendant respectfully demands a court reporter be present at all proceedings before the Court.

VI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant, Kroger Texas, L.P. (incorrectly identified as "Kroger Texas, L.P. d/b/a Kroger Store #435") respectfully prays that Plaintiff take nothing by this cause of action and that Defendant be permitted to recover the costs expended on its behalf. Defendant also prays for all other and further relief, both general and special, at law and in equity, to which it shows itself to be justly entitled.

Respectfully submitted,

/s/ B. Kyle Briscoe

B. Kyle Briscoe

Attorney-In-Charge

State Bar No. 24069421

kbriscoe@peavlerbriscoe.com

Margaret M. Knott

State Bar No. 15287250

mknott@peavlerbriscoe.com

PEAVLER | BRISCOE

2215 Westgate Plaza

Grapevine, Texas 76051

214-999-0550 (telephone)

214-999-0551 (fax)

ATTORNEYS FOR DEFENDANT

VERIFICATION

STATE OF TEXAS

COUNTY OF TARRANT

§

Before me, the undersigned authority, did personally appear Margaret M. Knott, who upon her oath deposes and says that she is one of the attorneys of record for Defendant, that she has never been convicted of a felony or a crime of moral turpitude, and that she is over the age of 18 and competent to make this verification. Accordingly, Margaret M. Knott verifies that the facts alleged in paragraph I. Verified Denial of the foregoing pleading are within her personal knowledge and true and correct.

Margaret M. Knoth Margaret M. Knott

Subscribed and sworn to before me on this day of April 2022.

YPUBLIC in and for the State of Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record pursuant to and in accordance with the Texas Rules of Civil Procedure on April 19, 2022.

/s/ B. Kyle Briscoe

B. Kyle Briscoe

Case 4:22-cv-00355-P Document 1-2 Filed 04/26/22 Page 21 of 21 PageID 27

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Bryan Briscoe on behalf of Bryan Briscoe Bar No. 24069421 kbriscoe@peavlerbriscoe.com Envelope ID: 63705746 Status as of 4/19/2022 4:24 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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Kyle Briscoe		kbriscoe@peavlerbriscoe.com	4/19/2022 4:15:41 PM	SENT
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